

Challenges in the U.S. Asylum System Impacting Survivors of Torture

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"REFUGEE POP QUIZ"

- What is the global estimate of refugees worldwide (2012)?
 - a. 42.5 million
 - b. 15.4 million
 - c. 28.8 million
 - d. 937,000

"REFUGEE POP QUIZ"

- What percentage of the world's refugees came to United States (2012)?
 - a. 50%
 - b. 25%
 - c. 5%
 - d. <1%

"REFUGEE POP QUIZ"

- What are the top five refugee producing countries (2012)? (circle 5 countries from the list)

Afghanistan

Somalia

Iraq

Syria

The Democratic Republic of the Congo

Zimbabwe

China

Burma/Myanmar

Mali

Sudan

Mexico

Tunisia

Libya

OVERVIEW OF PRESENTATION

- i. Review of Asylum/Withholding/CAT Standards, including bars to each
- ii. Discussion of ways refugees get to the US, including 3 "channels" of asylum and common challenges with each
- iii. Case studies and discussion

REVIEW OF ASYLUM/WITHHOLDING/CAT STANDARDS

- “Refugee”
 - *Outside* of country
 - *Unable or unwilling* to return or avail self of protection
 - *Because of* persecution or well-founded fear
 - Fear must be “objective” and “subjective”
 - *On account of* race, religion, nationality, membership in a particular social group, or political opinion

TRENDS: A CLOSER LOOK AT THE PROTECTED GROUNDS

- On account of race, religion, nationality, *membership in a particular social group*:
 - FGM – both based on actual past experience and feared future infliction
 - LGBT status & identity
 - Domestic violence – “married Guatemalan women who are unable to leave the relationship”
 - Gang-based claims – “Mungiki defectors” (Kenya – 8th Circuit – Gathungu v. Holder) but challenging area

TRENDS: A CLOSER LOOK AT NEXUS

- Mixed motives & "One central reason"
- Who is the persecutor?
 - Government actor
 - Non-government actor – unable or unwilling to control
 - Internal relocation

ASYLUM

- Meet the definition of refugee
- Are already in the United States or seeking admission at a port of entry
- Discretionary
- Credibility
- Are not barred from asylum
- Can be granted by USCIS Asylum Officer or Immigration Judge
- Relief = asylees can apply for LPR after 1 year, travel internationally and petition for family members. Qualify for refugee benefits.

BARS TO ASYLUM

- Persecution of others
- Particularly serious crime (non political)
 - “Aggravated felony” as defined in Immigration & Nationality Act
- Danger to security of US
- Terrorist activity
- Firm Resettlement
- One-year bar
- Safe Third Country

WITHHOLDING OF REMOVAL

- Based on fear of persecution on account of "race, religion, nationality, membership in a particular social group, or political opinion"
- Higher standard than well-founded fear (10%), must demonstrate "more likely than not" (>50%) to face persecution if returned to his or her country
- Not discretionary
- Some bars to asylum are not bars to withholding of removal
- Can only be granted by Immigration Court
- Relief = work authorization, guarantee by US not to deport to specific country

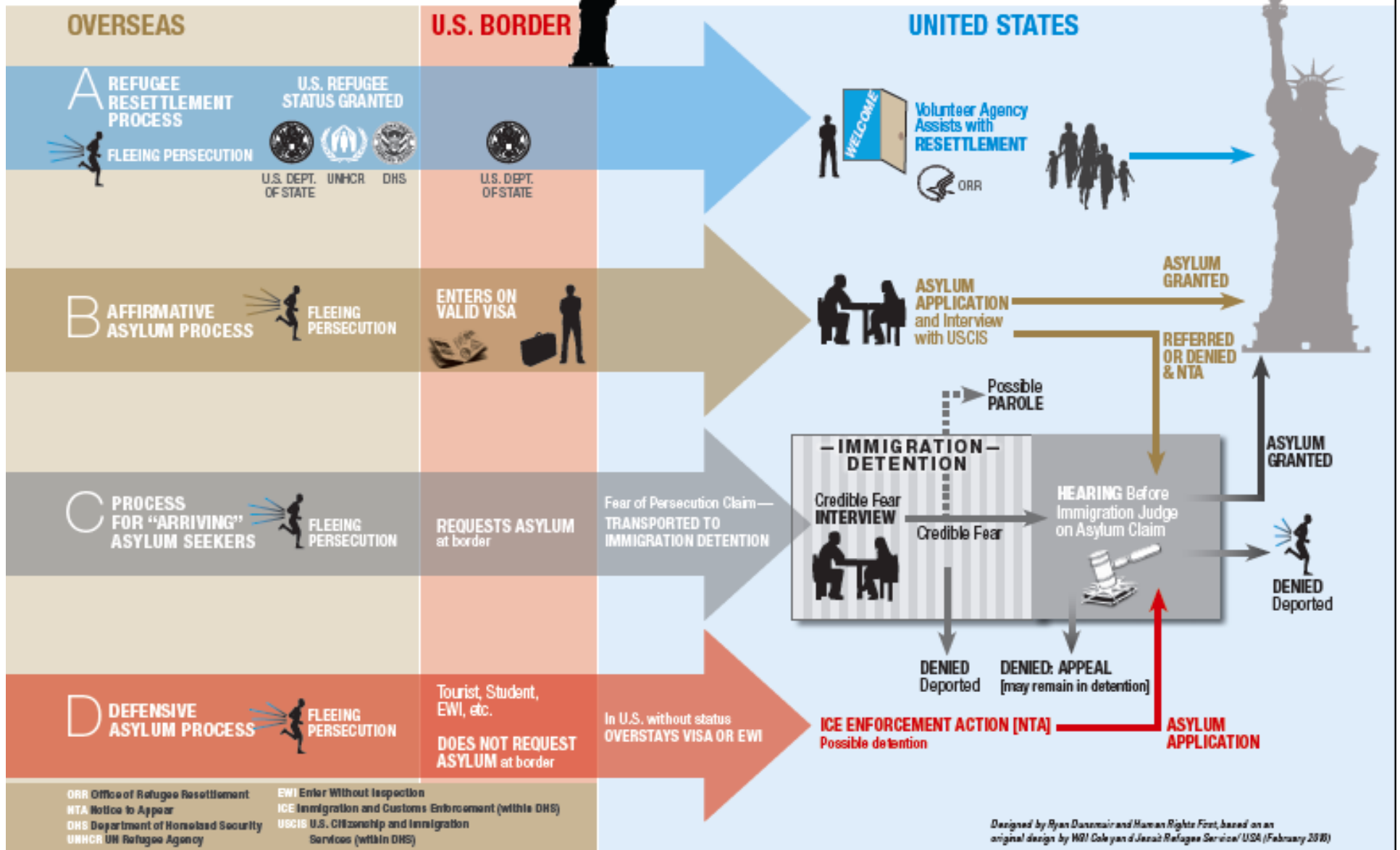
BARS TO WITHHOLDING OF REMOVAL

- Persecution of others
- Particularly serious crime (non political)
 - Not “aggravated felony” automatically, unless 5 year sentence, but courts will look at: the nature of the crime, i.e. was it against a person or property; the circumstances surrounding the crime; the length of the sentence; and whether the crime indicates dangerousness to the community
- Terrorist activity

CONVENTION AGAINST TORTURE (CAT)

- More likely than not that the applicant would face torture
 - Torture: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind ... when such pain or suffering is inflicted *by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity.*"
- No bars to CAT protection
- Requires government actor or acquiescence (9th Circuit: "willful blindness" v. "actual knowledge")
- Not discretionary
- Can only be granted by Immigration Court
- Relief = work authorization, guarantee by US not to deport to country where significant possibility of torture (can deport to a third country)

How Refugees Get to the U.S.



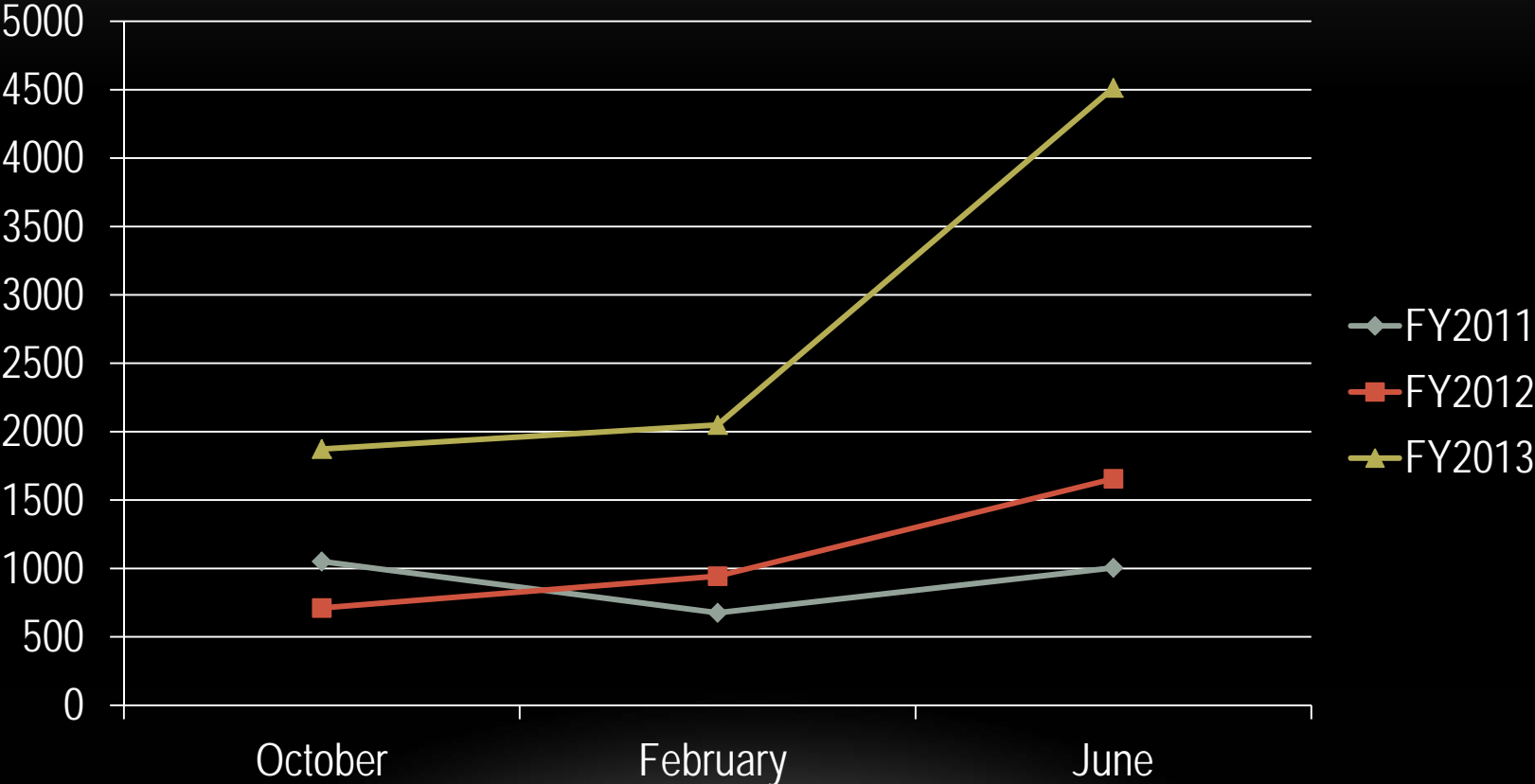
CREDIBLE FEAR—STANDARD & PROCESS

- **Credible Fear of Persecution:** *significant possibility* that individual could establish eligibility for asylum
- **Credible Fear of Torture:** applicant establishes that there is a *significant possibility* that he or she is eligible for withholding of removal or CAT deferral

Process

- Detention (statutory mandate per 8 CFR 235.3(b)(4)(ii)), 48 hour minimum wait before credible fear interview, if successful, referral to Immigration Court for application & possibility of parole or bond out of detention.

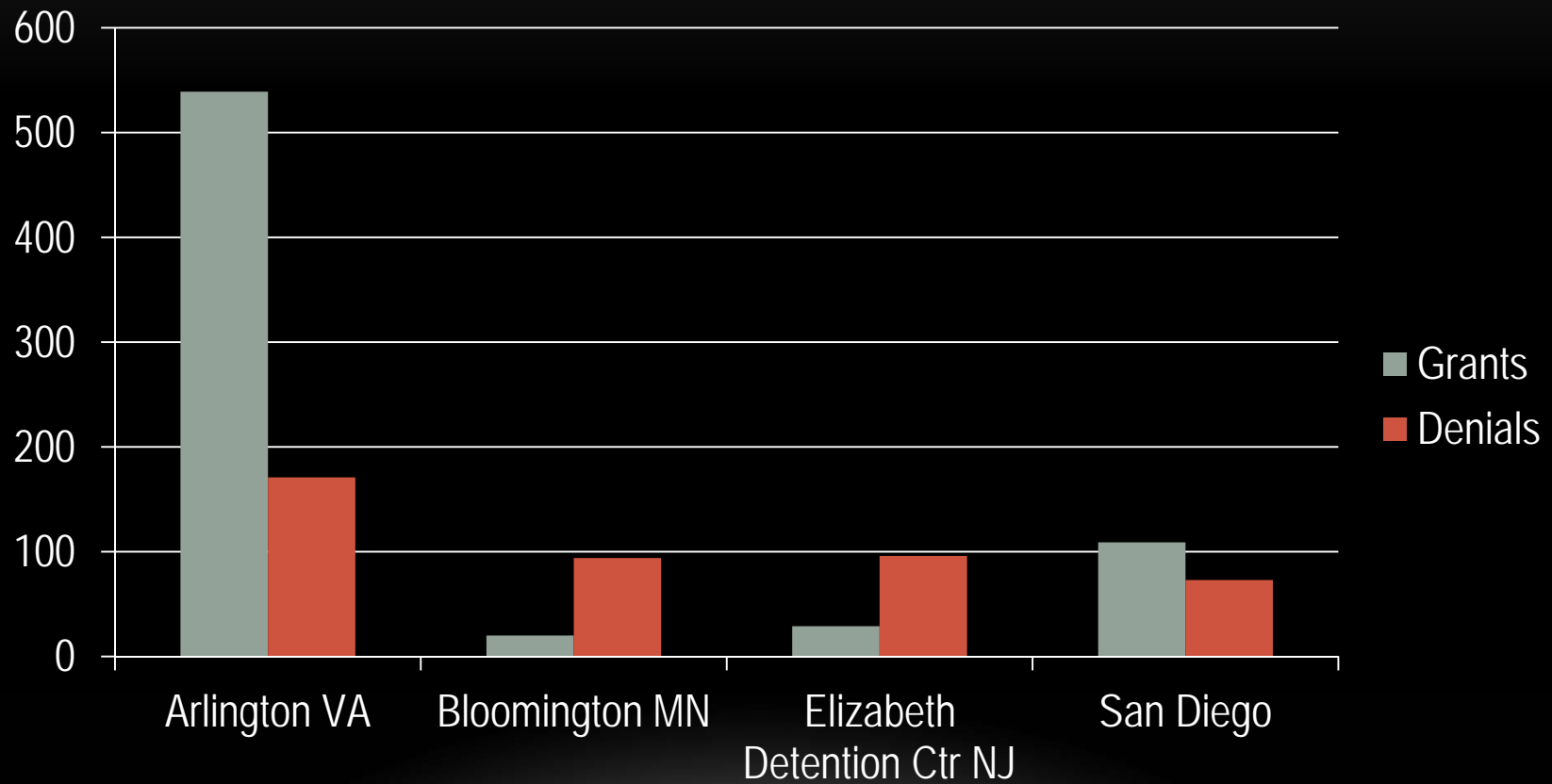
CREDIBLE FEAR WORKLOAD FY2011 - FY2013



TRENDS: ASYLUM APPLICATIONS AND BACKLOGS

- Increasing numbers of asylum applications from Mexico: 9200 in FY 2012, 126 grants
- Top asylum grants (Immigration Court): China, Ethiopia, Nepal, Eritrea, Egypt. (FY2012)
- Overall grant rate for asylum & Withholding by courts - ~64% for FY2012
- Backlogs: >345,000 cases pending nationwide (not just asylum, all immigration court) with wait time average at 550 days.

ASYLUM GRANT RATES BY COURT (SAMPLE)



3 "CHANNELS" OF ASYLUM AND CHALLENGES

1. Affirmative Asylum (USCIS Asylum Office)
2. Expedited Removal (USCIS Asylum Office + Immigration Court)
3. Defensive Asylum (Immigration Court)

AFFIRMATIVE ASYLUM – COMMON CHALLENGES

- Delays
 - Interpretation
 - Legal Counsel
 - One Year Bar or other Bars
 - Referral to Immigration Court
 - Others?
-
- Group discussion: strategies to manage or overcome these challenges

EXPEDITED REMOVAL—COMMON CHALLENGES

- Referral by CBP or Border Patrol
- Mandatory Detention
- Credible Fear
- Immigration Court (delays: detained v. non detained docket)
- Interpretation
- Access to legal counsel, mental health, medical or other services
- Others?
- Group discussion: strategies to manage or overcome these challenges

DEFENSIVE ASYLUM -- CHALLENGES

- Delays
 - Legal Counsel
 - One Year Bar or other Bars
 - Detention
 - Credibility questions
-
- Group discussion: strategies to manage or overcome these challenges

EMPLOYMENT AUTHORIZATION

- Waiting period: 180 days after filing for asylum
- Credible fear claims: often no eligibility
 - Expedited docket – take 1st available hearing date (w/i 180 days of filing)
 - Reject 1st available date, not work eligible

CASE STUDY #1

Is Amalie a refugee? Would you grant her asylum? What problems might she have in the US?

19 year-old Amalie fled her home country of Rwanda with her family in 1994. She arrived in the United States in June 2011 and applied for asylum in January 2013. On her asylum application she described that she suffered past persecution as a refugee from the 1994 Rwandan genocide. She explained that she was afraid to return because she has never lived in Rwanda. Amalie was less than 6 months old during the genocide and has not been in Rwanda since her family fled to Tanzania in 1994. Her family lived in a refugee camp in Tanzania for 10 years before they were resettled to Canada where Amalie lived for over 7 years. She is not a Canadian citizen.

CASE STUDY #2

Is Myra a refugee? Would you grant her asylum? What problems might she have in the US?

Myra fled her home country Eritrea in October 2012 and filed for asylum in the United States immediately upon arrival in April 2013. Myra has been active politically in a group that opposes the repressive government of Eritrea. Her political activities forced her to endure imprisonment and severe torture, including rape, by government soldiers. When Myra decided to flee, she traveled across the border to Sudan. In Sudan, she hired a smuggler who made arrangements for her to travel by plane to Moscow, then Dubai, then Cuba, then Brazil. Upon arrival in Brazil, she was then passed off to another smuggler and traveled via foot, truck, bus and boat up through South and Central America. Myra was arrested by immigration authorities in Mexico and spent 2 months in immigration detention there but did not apply for protection in Mexico. After being released, she traveled via land to the US/Mexico border and at the US Customs and Border Protection port of entry she requested asylum.